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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORKRobert Derek Lurch Jr.

(In the space above enter the full name(s) of the plaintiff(s).)

-against-

CITY OF NEW YORKAMENDED
COMPLAINTunder the Civil Rights Act,
42 U.S.C. § 1983Jury Trial: ☒ Yes ☐ No
(check one)16 Civ. 3835 ()

(In the space above enter the full name(s) of the defendant(s). If you cannot fit the names of all of the defendants in the space provided, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed in the above caption must be identical to those contained in Part I. Addresses should not be included here.)

I. Parties in this complaint:

- A. List your name, identification number, and the name and address of your current place of confinement. Do the same for any additional plaintiffs named. Attach additional sheets of paper as necessary.

Plaintiff's Name Robert Derek Lurch Jr.
 ID# 16A2468
 Current Institution Franklin Correctional Facility
 Address 62 Barc Hill Rd., P.O. Box 10
Melrose, New York 12953

- B. List all defendants' names, positions, places of employment, and the address where each defendant may be served. Make sure that the defendant(s) listed below are identical to those contained in the above caption. Attach additional sheets of paper as necessary.

Defendant No. 1 Name _____ Shield # _____
 Where Currently Employed _____
 Address _____

Defendant No. 2 Name _____ Shield # _____
 Where Currently Employed _____
 Address _____

Defendant No. 3 Name _____ Shield # _____
 Where Currently Employed _____
 Address _____

Who did
what?

Defendant No. 4 Name _____ Shield # _____
 Where Currently Employed _____
 Address _____

Defendant No. 5 Name _____ Shield # _____
 Where Currently Employed _____
 Address _____

II. Statement of Claim:

State as briefly as possible the facts of your case. Describe how each of the defendants named in the caption of this complaint is involved in this action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If you intend to allege a number of related claims, number and set forth each claim in a separate paragraph. Attach additional sheets of paper as necessary.

A. In what institution did the events giving rise to your claim(s) occur?

GnOC and MOC

B. Where in the institution did the events giving rise to your claim(s) occur?

Housing area Dorn 16A (GnOC) / Housing area 6 East (MOC)

C. What date and approximate time did the events giving rise to your claim(s) occur?

Feb 8 2016 7 PM - 11 PM (GnOC) / May 11, 2016 - June 17, 2016 (MOC)

D. Facts: - See attached -

What
happened
to you?

- See Attached -

claim 1 (GMO)

claim 2 (MOC)

claim
#1
against
city of
New York
Docket #
16cv3835

14 Amendment violation

municipality

Liability

"Having assumed physical custody of inmates, who cannot protect and defend themselves in the same way as those at liberty can, [a municipality] owes a duty of care to safeguard inmates, even from attacks by fellow inmates" (Sanchez v. State of New York, 99 NY2d 247, 252 [2002]).

However, this duty does not render the municipality an insurer of inmate safety, and negligence cannot be established by the mere occurrence of an inmate assault (id. at 253, 256).

Rather, "the scope of the [municipality's] duty to protect inmates is limited to risks of harm that are reasonably foreseeable" (id. at 253).

constitutional

violation

A pretrial detainee who has not been convicted of any crime has a due process right to be free from violence from other inmates (U.S. Const. amend. 14).

foreseeability

& Substantial

risk of

harm

Reasons why the potential threat of substantial risk of harm was foreseeable:

(1) I was assaulted by unknown assailants in Dorm 3 Lower B

to me was unreasonable because I had just got into an altercation with an inmate with gang ties, it was likely I would be retaliated against if I stayed in the same building, the dorm I was housed in was known for gang members that authority reacted all over the building, and Rikers Island had over 9 different buildings I could've been placed in other than C-73-50 the reason I was given was inexcusable because there was numerous buildings I could've move to. I didn't know exactly who would attack me, I just knew I would be attacked because getting involved in an altercation with someone even cool with gang members is disrespect and I knew by being involved in a altercation with this person someone would be sent to assault me.

as See ab. 1:12
reason #3

(3) Because of the incident I was involved in, the housing area where it happened lost their phone privileges for the whole day being told by officers "blame the inmates that wanted to fight so early in the morning". The dorm's phone privileges wasn't restored until I was housed back in the exact same dorm that lost its privileges because of the incident. as soon as I walked in, inmates all over the dorm expressed their anger stating "we should jump you because you're the reason the phone was shut off all day. which exposed me to much more danger than I already faced because these inmates were punished

Facts of Incident

Pg. 1 of 5

On Feb 8, 2016 I had an altercation with another inmate at 5 AM in the morning. After officers escorted me to Intake to wash the chemicals out of my eyes, I informed the officials that I was no longer safe in the building due to the affiliation the other inmate had with a gang. I put the officials on notice of the substantial risk I faced if I remained in that building (C-73 Rivers Island). The official said he would look into seeing about my re-location. I went to Court that same day and upon my return, I inquired about my requested re-location due to the incident earlier that day. Subsequently, after explaining to correctional officials again that I wouldn't be safe, I was then brought back to the very same housing area. Sometime later that evening gang intelligence came to the housing area to interview me, which only increased the tension that was already in the dorm from the earlier incident, in which the dorm lost its phone privileges as a result of the incident I was involved in. I requested to be moved again and was denied. The interview concluded and I was not moved from the location. Later that night, while performing my work detail in the bathroom, I was attacked by several inmates, and as a result suffered contusions, abrasions, and a split lip, when inmates

Facts of
Incident
p. 3 of 5

about my injuries that day was accompanied by the female officer who sprayed me in the face with chemicals during the morning incident. She asked me was I okay? I informed her that I have bruises on my forehead from the assault and various cuts. However before she could respond back, I stated "I've been assaulted before everything should heal up in a couple of weeks". She asked me if I was okay mentally and I informed her except for not feeling comfortable without my back against the wall I'm okay I guess. She then reviewed my chart and asked me didn't I just get into an altercation in that same dorm, why would you go back? Before I could respond the female officer that sprayed during the morning incident told her I don't know why he let them house him in that same dorm, he know then boys don't like him. I told her I informed security that this was going to happen but they didn't listen. Before I left the health clinic the female officers in the clinic told me "don't let them house you where you have problems at you lucky then guys didn't cut you". Another one stated "you know they don't care what happen to you all", one of them said shaking her head, I informed her I wouldn't and they all told me to be safe. As I was leaving I overheard one say "they knew not to put that boy in the same dorm". I was escorted back to intake from the clinic and

Facts of

Incident

pg. 5 of 5

the first day it occurred". I further stated "you all wait five days after the incident to take pictures after the injuries don't look as bad that's corrupt," she told me "Look I'm just doing what I was told. So there's pictures of my injuries taken 8-10 days after the incident. To be fair the first attempt was 5 days after most the swelling had went down.

Constitutional Protections/

Foreseeability

Constitutional
Protections

(1) I have a right to be free from violence at the hands of other inmates (Farmer v. Brennan, 511 U.S. at 833, 114 S. Ct. 1970)

This right was violated when officials were put on notice of substantial risk of harm faced, placed me in the same dorm that created this risk, and as a result I was attacked.

(2) a prison official may be held liable under the Eighth amendment (a detainee's 14 amendments right) if he knows that inmates face a substantial risk of serious harm and disregards that risk by failing to take reasonable measures to abate it (Clem v. Felt, 566 F.3d 1177, 1182 (9th Cir 2009) (en banc) (quoting Farmer, 511 U.S. at 847, 114 S. Ct. 1970))

when officials disregarded substantial risk of harm I faced by failing to move me out the building, these officials failed to take reasonable measures to abate the risk.

Klein
 #2
 Against
 City of
 New York
 Document #
 16cv8835

Deliberate Indifference

Claim

Municipality

Liability

I was Inferred by a medical doctor working at MDC that it was DOC policy not to provide inmates with a medical need for more comfortable bedding with a Doctor note to receive better bedding. I was shown an email that was sent to all DOC healthcare professionals not to provide inmates with notes that will require officers to provide them with better bedding. Department of corrections is run by the city of New York and aids in every decision made by Department of corrections in regards to running the city's facility.

Constitutional

violation

Officials created a policy that created a situation that posed a substantial risk of harm to inmate medical needs in their custody that showed the city defendants showed a deliberate indifference to the health or safety of inmates in their custody that violated a detainee's 14 amend. due process rights and a convicted person's 8th amend. rights.

under the 14th amendment's Due process clause, pretrial detainees unlike convicted prisoners, cannot be punished at all, much less maliciously and sadistically (U.S. Const. amend 14)

Facts of Incident

claim 2

Pg. 1 of 3

while in Manhattan Detention Center for the period of May 11 2016 to June 17 I was forced to endure unconstitutional and below standard (minimum) living conditions. The Bob Barker mattress I was supplied with by MDC was in decrepit condition. These mattresses are usually at least 4 inches thick when they are brand new. The one I was given was no more than one inch thick and resembled a deflated air mattress. These mattresses were intended to be used without foundation yet DOC (Department of Corrections) use's these mattresses as beds for inmates to sleep on supporting them on a hard metal foundation. DOC utilizes these mattresses for a purpose other than their original intended use (floor mats) and not for what they were design for. The one I received was in such bad condition that not only did it resemble a deflated air mattress, it also felt like I was sleeping on one. I was supplied with no pillow which caused the stab wound on my neck discomfort. which resulted in sharp pains and any movement on this mattress to find a more comfortable position to sleep resulted in a considerable amount of pain. If I turned to find a more comfortable position my hip bone would make direct contact it would

Pg. 3 of 3

will eliminate the problem causing the pain and will eliminate the need for medication. He told me he understands and then showed me an email DOC (Department of Corrections) sent to its medical staff which stated under no circumstances are doctors allowed to provide inmates with documentation stating its a medical need that they be provided with better bedding or double mattresses (special bedding request). Sleeping on a mattress that the steel foundation could be felt anytime I made a movement was tantamount to cruel/ unusual punishment and DOC making a policy which made it impossible to improve these conditions showed their deliberate indifference to the medical needs of inmates in their custody. Instead of the more humane solution of DOC providing me with better bedding because of the mattress's decrepit condition and medical problems it was causing. I was prescribed Ibuprofen on June 9, 2016 to deal with the pain it caused. I was housed in 6 East (housing area) Cell 11 Lower.

Was anyone else involved?

Who else saw what happened?

III. Injuries:

If you sustained injuries related to the events alleged above, describe them and state what medical treatment, if any, you required and received.

NECK/BACK PAIN/JOINT STIFFNESS (MDC) May 11, 2016 - June 17, 2016

Contusions, abrasions, Permanent Disfigured Lip (GMD) Feb. 8, 2016

IV. Exhaustion of Administrative Remedies:

The Prison Litigation Reform Act ("PLRA"), 42 U.S.C. § 1997e(a), requires that "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." Administrative remedies are also known as grievance procedures.

A. Did your claim(s) arise while you were confined in a jail, prison, or other correctional facility?

Yes ☒ No ☐

If YES, name the jail, prison, or other correctional facility where you were confined at the time of the events giving rise to your claim(s).

GMDC, MDC

B. Does the jail, prison or other correctional facility where your claim(s) arose have a grievance procedure?

Yes ☒ No ☐ Do Not Know ☐

C. Does the grievance procedure at the jail, prison or other correctional facility where your claim(s) arose cover some or all of your claim(s)?

Yes ☐ No ☒ Do Not Know ☐

If YES, which claim(s)?

D. Did you file a grievance in the jail, prison, or other correctional facility where your claim(s) arose?

Yes ☒ No ☐

If NO, did you file a grievance about the events described in this complaint at any other jail, prison, or other correctional facility?

Yes ☐ No ☐

E. If you did file a grievance, about the events described in this complaint, where did you file the grievance?

Filed complaint about GMDC Incident at Grvc [complaint included]

1. Which claim(s) in this complaint did you grieve?

Being forced to be placed in a house where I faced substantial risk of harm at.

2. What was the result, if any?

NONE

3. What steps, if any, did you take to appeal that decision? Describe all efforts to appeal to the highest level of the grievance process.

F. If you did not file a grievance:

1. If there are any reasons why you did not file a grievance, state them here:

I didn't file a grievance for my claim against MDC because I was told it wasn't a grievable issue.

2. If you did not file a grievance but informed any officials of your claim, state who you informed, when and how, and their response, if any:

my claim against MDC I informed the grievance committee which was a lady. I informed her about the policy and another claim concerning the cameras. She informed me any policy or security measure implemented by MDC IS a non-grievable issue.

- G. Please set forth any additional information that is relevant to the exhaustion of your administrative remedies.

Note: You may attach as exhibits to this complaint any documents related to the exhaustion of your administrative remedies.

V. Relief:

State what you want the Court to do for you (including the amount of monetary compensation, if any, that you are seeking and the basis for such amount). I'm suing for \$1,000,000

(1 million dollars) for past and future pain and suffering
(compensatory damages).

On
these
claims

VI. Previous lawsuits:

- A. Have you filed other lawsuits in state or federal court dealing with the same facts involved in this action?

Yes ___ No ☒

- B. If your answer to A is YES, describe each lawsuit by answering questions 1 through 7 below. (If there is more than one lawsuit, describe the additional lawsuits on another sheet of paper, using the same format.)

1. Parties to the previous lawsuit:

Plaintiff _____
Defendants _____

2. Court (if federal court, name the district; if state court, name the county) _____

3. Docket or Index number _____

4. Name of Judge assigned to your case _____

5. Approximate date of filing lawsuit _____

6. Is the case still pending? Yes ___ No ___
If NO, give the approximate date of disposition _____

7. What was the result of the case? (For example: Was the case dismissed? Was there judgment in your favor? Was the case appealed?) _____

On
other
claims

- C. Have you filed other lawsuits in state or federal court otherwise relating to your imprisonment?
Yes ___ No ☒

- D. If your answer to C is YES, describe each lawsuit by answering questions 1 through 7 below. (If there is more than one lawsuit, describe the additional lawsuits on another piece of paper, using the same format.)

1. Parties to the previous lawsuit:

Plaintiff _____
Defendants _____

2. Court (if federal court, name the district; if state court, name the county) _____

3. Docket or Index number _____

4. Name of Judge assigned to your case _____

5. Approximate date of filing lawsuit _____

6. Is the case still pending? Yes ____ No ____
If NO, give the approximate date of disposition _____
7. What was the result of the case? (For example: Was the case dismissed? Was there judgment in your favor? Was the case appealed?) _____

I declare under penalty of perjury that the foregoing is true and correct.

Signed this 6 day of October, 2016.

Signature of Plaintiff	<u>Robert L. Lench</u>
Inmate Number	<u>16A2468</u>
Institution Address	<u>Franklin Correctional Facility</u> <u>P.O. Box 10, 62 Base Hill Rd.</u> <u>Melrose, New York</u> <u>12953</u>

Note: All plaintiffs named in the caption of the complaint must date and sign the complaint and provide their inmate numbers and addresses.

I declare under penalty of perjury that on this 6 day of October, 2016 I am delivering this complaint to prison authorities to be mailed to the *Pro Se* Office of the United States District Court for the Southern District of New York.

Signature of Plaintiff: Robert L. Lench

**CITY OF NEW YORK - DEPARTMENT OF CORRECTION****INMATE GRIEVANCE AND REQUEST PROGRAM**

Form: # 7102R

Eff.: 09/10/12

Ref.: Dir. #3376

**DISPOSITION FORM**

Attachment - C

If this is a submission not subject to IGRP process, DOC Grievance Supervisor must choose its category and write down the next steps for the inmate.

- ☐ Staff-on-inmate non-sexual assault (use of force) allegation
☐ Staff-on-inmate sexual assault/abuse allegation
☐ Staff-on-inmate non-sexual harassment
☒ Inmate-on-inmate non-sexual assault allegation
☐ Inmate-on-inmate sexual assault/abuse allegation
☐ Inmate-on-inmate non-sexual harassment allegation
☐ Status as an intended contraband recipient, enhanced restraint, Red ID, or centrally monitored case inmate

- ☐ Medical staff, e.g., complaints regarding quality of care, request for second medical opinion
☐ Mental health staff, e.g., complaints regarding quality of care, request for second medical opinion
☐ Request for protective custody (fear for safety)
☐ Request for accommodation due to disability
☐ Inmate disciplinary process and dispositions
☐ Freedom of Information law request
☒ Other

Next steps:

Forwarded to Deputy Warden

Date of Deadline for Status Update from Relevant Entity: N/A

Inmate's Signature:

Date:

Grievance Supervisor's Signature:

Date:

STEP 2: FORMAL HEARING OF INMATE GRIEVANCE RESOLUTION COMMITTEE

Formal Hearing Disposition: _____

Date returned to inmate: _____

IGRC Members Signatures: _____

Please decide within five business days of receipt whether to appeal (Check one box below.)

- ☐ Yes, I agree with the IGRC hearing disposition.
☐ No, I disagree with the IGRC hearing disposition and seek to appeal to the Commanding Officer.

Inmate's Signature:

Date:

Grievance Supervisor's Signature:

Date:

STEP 3: APPEAL TO THE COMMANDING OFFICER

Grievance Supervisor must check only one box below.

- ☐ Grievance forwarded to the Commanding Officer for action upon IGRC recommendation.
☐ Grievance not forwarded to the Commanding Officer (explain): _____

Grievance Supervisor's Signature:

Date:

INMATE GRIEVANCE AND REQUEST PROGRAM STATEMENT FORM

Inmate's Name: Robert Lorch	Book & Case #: 3491505637	NYSID # (optional):	
Facility: GRUC	Housing Area: 15A	Date of Incident: Feb 9, 2016	Date Submitted: March 9, 2016

All grievances and requests must be submitted within ten business days after the incident occurred, unless the condition or issue is ongoing. The inmate filing the grievance or request must personally prepare this statement. Upon collection by Inmate Grievance and Request Program (IGRP) staff, IGRP staff will time-stamp and issue it a grievance/request reference number. IGRP staff shall provide the inmate with copy of this form as a record of receipt within two business days of receiving it.

Request or Grievance:

I was ~~in~~ in an altercation in GRUC with some guys. I told the officers I don't want to be put in the same house. I want to be safe and the officers put me in the same house. When I got there it wasn't even one day before something else happened. If I have known issues in any location I don't want to be placed there to be placed in physical danger. It was Captain LeBaron I asked him to be moved and he told me no you go where I want you to go.

Action Requested by Inmate

If I have known issues in a dorm or housing area I don't want to be placed there by officers that don't care about my safety.

Please read below and check the correct box:

Do you agree to have your statement edited for clarification by IGRP staff?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Do you need the IGRP staff to write the grievance or request for you?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Have you filed this grievance or request with a court or other agency?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Did you require the assistance of an interpreter?	<input type="checkbox"/> Yes	<input type="checkbox"/> No

Inmate's Signature: [Signature]

Date of Signature: 2/9/2016

For DOC Office Use Only

IGRP RETAINS THE DOUBLE-SIDED ORIGINAL FOR ADMINISTRATIVE RECORDS.
IGRP MUST PROVIDE A COPY OF THIS FORM TO THE INMATE AS A RECORD OF RECEIPT.

Time Stamp Below: 3/9/16 CD	Grievance and Request Reference #: NG	Category: Timeless / Inmate on Inmate Assault
Inmate Grievance and Request Program Staff's Signature: [Signature]		

**CITY OF NEW YORK - DEPARTMENT OF CORRECTION****INMATE GRIEVANCE AND REQUEST PROGRAM**Form: # 7102R
Eff.: 09/10/12
Ref.: Dir. #3376**DISPOSITION FORM**Grievance/Request Reference #:
Lurch, Robert 349-15-05237Date Filed:
3/9/16Facility:
GRVC-15ATitle of Grievance or Request:
NGCategory:
Inmate on Inmate/Timeless

From IGRP Inmate Statement Form, print or type short description of request/grievance: I was in an altercation in GMDC with some guys. I told the officers I don't want to be put in the same house. I want to be safe and the officers put me in the same house. When I got there it wasn't even one day before something else happen. If I have known issues in any location I don't want to be force there. To be place in physical danger. It was Captain Lebron I asked him to be moved and he told me no you go where I want you to go.

Action Requested by Inmate: If I have known issues in a dorm or housing area. I don't want to be place there by officers that don't care about my safety

STEP 1: INFORMAL RESOLUTIONCheck one box: ☐ Grievance ☐ Request ☒ Submission not subject to the IGRP process.

The Inmate Grievance and Request Program proposes to informally resolve your grievance or request as follows below. Alternatively, IGRP staff shall provide an explanation for why the submission is not subject to the IGRP process.

IGRC informed the grievant that staff complaints are submissions not subject to the IGRP process and has been forwarded to the Deputy Warden for investigation

Are you satisfied with the proposed resolution?

☐ Yes, I accept the resolution. ☐ No

I request a formal hearing of the Inmate Grievance Resolution Committee within 5 business days from notification of the proposed resolution. I understand that if my submission involves a request to exercise religious beliefs or practices not currently available, then the Committee on Religious Accommodations will review my request

Inmate's Signature:

Date:

Grievance Supervisor's Signature:

Date:

*X Robert Lurch**CSB**3/9/16*